

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3865

IN THE MATTER OF:

Served December 19, 1991

Application of MIJU EXPRESS, INC., )  
for a Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-91-36

By application filed October 21, 1991, Miju Express, Inc. (Miju or applicant), a Virginia corporation, seeks a Certificate of Authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District.

The Commission published notice of this application in Order No. 3838, served November 1, 1991, and therein directed Miju to publish further notice in a newspaper and set a protest deadline of November 27, 1991. Miju complied with the notice publication requirement. No protests have been filed.

SUMMARY OF EVIDENCE

Miju's application contains information regarding, among other things, its corporate status, vehicle maintenance program, minimum driver qualifications, rates, finances, and regulatory compliance record.

Miju proposes to initiate operations with a 1990, 20-passenger "mini-coach." Miju apparently intends to provide charter service to tourists booked through its affiliate, Washington U.S. Tours. Miju's tariff contains rates for hourly charter service and for transfer charter service.

Miju's balance sheet, as of October 15, 1991, shows assets of \$50,000; liabilities of \$25,000; and stockholders' equity of \$25,000. Miju's projected income statement for the twelve months ending September 30, 1992, shows anticipated total operating income of \$82,860, of which \$48,960 is expected from WMATC-authorized operations. Miju also projects for this period total expenses before depreciation of \$58,000, depreciation expense of \$8,000, and net income before taxes of \$16,860.

Miju's president certifies on Miju's behalf that it has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation regulations relating to safe transportation of passengers for hire.

Miju's stock is owned 55 percent by its president, Mr. Young S. Kim; 40 percent by its vice president, Mr. Seung H. Han; and 5 percent by its secretary, Ms. Helena Y. Kim.

It is certified that neither Miju nor any person controlling, controlled by, or under common control with Miju has any relationship with a carrier other than Miju.

#### DISCUSSION AND CONCLUSIONS

This case is governed by the Compact, Title II, Article XI, Section 7(a) which provides in relevant part that:

. . . the Commission shall issue a certificate to any qualified applicant, . . . if it finds that --

(i) the applicant is fit, willing, and able to perform that transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and  
(ii) that the transportation is consistent with the public interest.

Based on the evidence in this record, as summarized above, the Commission finds Miju to be fit as to finances and operations. Miju's regulatory compliance fitness, however, requires more discussion.

In the Compliance Fitness Evidence section of Miju's application, page 5, the following note appears:

NOTE: A company owned by Applicant's President had been engaged in transportation activities without authority, without knowledge that authority was required. When the requirement for authority was made known, prompt steps were taken to obtain authority. This is described in greater detail in the affidavit of Mr. Young S. Kim, Exhibit J.

Mr. Kim is also Miju's controlling stockholder. In his affidavit, he avers in pertinent part:

By way of background, I am the owner of Washington U.S. Tours, a travel company which specializes in serving the Korean community and Korean visitors to the United States. I am also President and one of the owners of applicant Miju Express, Inc., a newly formed company.

During the past several years, Washington U.S. Tours has operated two small mini-coaches for purposes of transporting tour groups for which it has arranged transportation from Korea. A few weeks ago, one of our vehicles was stopped by a policeman and our driver was given a citation for operating without WMATC authority.

Once I became aware of the need, I contacted an attorney who explained to me the requirements of transportation law.

The Commission is perplexed by Mr. Kim's seeming disavowal of any knowledge of wrongdoing. This is not the first time a Washington U.S. Tours driver was ticketed by U.S. Park Police for operating without WMATC authority. Mr. Kim received a warning in December 1983, and a citation in August 1984. See Order No. 2712, served June 6, 1985, at pp. 6-7. He was provided thereafter a copy of the Compact and the Commission's Regulations. Id. at p. 7. He subsequently applied for a Certificate of Public Convenience and Necessity (later denied), testified at hearing and was represented by counsel. Id. at p. 9. It defies belief that the unlawful operations admitted in Miju's application and Mr. Kim's supporting affidavit were anything less than willful.

Notwithstanding Mr. Kim's history of unauthorized operations, we recognize that this is Miju's application, not Mr. Kim's. We further note that "[d]etermination of compliance fitness is prospective in nature." See Order No. 3839, served November 4, 1991. Thus, while the past conduct of a corporate applicant's president and controlling shareholder is relevant to a determination of the applicant's regulatory compliance fitness, it is not necessarily conclusive.

It appears from Mr. Kim's affidavit that Washington U.S. Tours discontinued unauthorized operations a few weeks prior to the filing of Miju's application on October 21, 1991. Mr. Kim, therefore, has had ample opportunity to reflect on the gravity of his situation. His incorporation of Miju evidences his willingness to heed the advice of counsel despite the burden of additional expense. We do not suggest that a past offender may clothe itself in respectability through the expediency of mere incorporation, but such is not the case here. Mr. Kim has brought in a 40 percent partner, Mr. Han, Miju's vice president. The record in this proceeding contains no allegation or evidence linking Mr. Han to Washington U.S. Tours' recidivism. Mr. Han has the means and motivation to ensure Miju's compliance with the Compact and the Commission's rules, regulations and orders. Mr. Kim has sworn that Miju will so comply. We therefore find that applicant has adequately established its prospective compliance fitness. We further find that the transportation is consistent with the public interest.

THEREFORE, IT IS ORDERED:

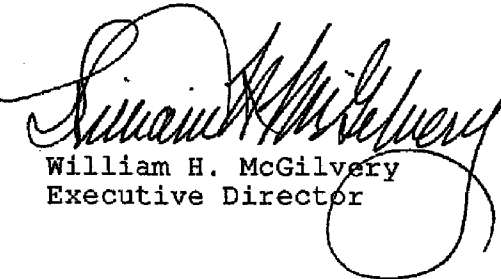
1. That Miju Express, Inc., is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District.

2. That Miju Express, Inc., is hereby directed, within 30 days of the date of this order or such additional time as the Commission may direct or allow, to file (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 3623; (b) three copies of its tariff(s) in accordance with Regulation No. 55; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or

a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (e) its official business address as discussed in Regulation No. 68; and (f) an affidavit of identification of vehicles pursuant to Commission Regulation No. 61, for which purpose WMATC No. 194 is hereby assigned.

3. That upon timely compliance with the requirements of the preceding paragraph and acceptance of the materials required by the Commission, Certificate of Authority No. 194 shall be issued to Miju Express, Inc., as appended to this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS DAVENPORT, SCHIFTER, AND SHANNON:



William H. McGilvery  
Executive Director

**WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION**

**CERTIFICATE OF AUTHORITY**

**NO. 194**

***Miju Express, Inc.***

*By Order No. 3865 of the Washington Metropolitan Area Transit Commission issued December 19, 1991;*

*WHEREAS, the above-named carrier is entitled to receive authority to transport passengers within the Washington Metropolitan Area Transit District;*

*THIS CERTIFICATE OF AUTHORITY is hereby issued to the named carrier as evidence of the authority to engage in the for-hire transportation of passengers by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege granted to the named carrier:*

**IRREGULAR ROUTES**, *transporting passengers, together with baggage in the same vehicles as passengers, between points in the Washington Metropolitan Area Transit District;*

**RESTRICTED TO** *operations conducted according to the named carrier's applicable tariff on file with the Commission; and*

**RESTRICTED AGAINST** *(1) transportation solely within the Commonwealth of Virginia and (2) any passenger transportation for hire on an individual fare paying basis in competition with any existing, scheduled, regular-route, passenger transportation service performed by, or under a contract with, the Federal Government, a signatory to the Compact, a political subdivision of a signatory, or the Washington Metropolitan Area Transit Authority.*

**THIS CERTIFICATE OF AUTHORITY DOES NOT AUTHORIZE ANY TRANSPORTATION BY ANY PERSON OTHER THAN THE CARRIER NAMED HEREON.**

**THIS CERTIFICATE OF AUTHORITY IS NOT VALID UNLESS THE CARRIER NAMED HEREON IS IN COMPLIANCE WITH THE INSURANCE REQUIREMENTS OF THE COMMISSION.**

**IT IS A FURTHER CONDITION** *of this certificate of authority that the carrier named hereon shall (a) provide safe and adequate transportation service, equipment, and facilities and (b) observe and enforce Commission regulations.*